

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON / GREENWOOD DIVISION

Palmetto Conservation Foundation,)	
)	
Plaintiff,)	C.A. No. 8:08-2738-HMH
)	
vs.)	OPINION & ORDER
)	
H.J. Smith,)	
)	
Defendant.)	

This matter is before the court on Palmetto Conservation Foundation's ("the Foundation") motion for a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure. On August 1, 2008, the Foundation requested that a temporary restraining order issue against H.J. Smith ("Smith"), to enjoin Smith from further interfering with certain property interests held by the Foundation. A TRO was issued on August 4, 2008.

On August 12, 2008, the parties came before the court on a hearing for preliminary injunctive relief, at which time the court entertained oral argument. Defendant agreed to the imposition of a preliminary injunction and waived the requirement of bond.

The Opinion and Order issued by this court on August 4, 2008, by which the court granted a TRO against Smith, inadvertently mischaracterized the size of the property in dispute. That Order stated that "[t]he property at issue is a lot consisting of .22 acres along a rail transportation corridor formerly owned and operated by Norfolk Southern Railway." The parties have agreed that the property in dispute consists of more than the .22-acre parcel. Accordingly, the language of this Order has been modified to more accurately describe the subject property. Norfolk Southern's easement, which the Foundation now holds, runs for 100 feet on either side of the rail bank, as measured from the bank's centerline. In this case, the subject property is so

much of Smith's real estate that is burdened by the Foundation's easement. This includes a .22-acre parcel known as "the Depot."

The Foundation's motion for a preliminary injunction, docket number 4, is granted. It is therefore

ORDERED that Smith shall refrain from engaging in any further cutting, clearing, grading, paving, construction, or site preparation on the subject property for any purpose, except as may be expressly approved by the Foundation, until further order of this court. It is further

ORDERED that Smith shall refrain from interfering with the Foundation's entry onto or egress from the subject property for the purpose of developing, constructing, or maintaining a recreational trail, until further order of this court.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
August 14, 2008